



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Food Desert Relief Tax Credit Sale

Request

The Members are asked to approve:

- 1) The sale of up to \$50 million in available tax credits in calendar year 2023 in a manner consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
- 2) Delegated authority to the Chief Executive Officer to establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.
- 3) Delegated authority to the Chief Executive Officer to establish start and end dates for the tax credit auction.
- 4) Delegated authority to the Chief Executive Officer to approve tax credit purchasers as long as the bidders have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed herein.

New Jersey Economic Recovery Act

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c.156 (ERA), into law. The ERA presents a strong recovery and reform package that addresses the ongoing economic impacts of the COVID-19 pandemic and positions New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical

to economic development, and when used correctly, they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes more than 15 economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey’s innovation economy;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Tax credits to strengthen New Jersey’s communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Additional tax credits for film and digital media.

Included in the ERA is the Food Desert Relief Act (FDRA), sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq). The FDRA allows the New Jersey Economic Development Authority (NJEDA) to sell a portion of the \$240 million in tax credits allocated by the FDRA (\$40 million annually). These funds from the sale can be used in numerous ways to strengthen food security in New Jersey Food Desert Communities, including but not limited to:

- Offering technical assistance on best practices for increasing the accessibility of nutritious foods
- Providing grants and loans for food retailers of all sizes to fund equipment costs associated with providing nutritious food
- Supporting technology costs for the procurement or upgrade of technology systems to support online ordering and e-commerce, and
- Other initiatives to strengthen food security.

This memorandum requests approval of the Food Desert Relief Tax Credit Sale, including the structure, eligibility criteria, bidding process and the bid review process. Any request for a specific grant, loan, or technical assistance program will be brought at a later time to the Board. The Members are separately being asked to approve rules governing the Food Desert Relief Tax Credit Program.

Sale Purpose and General Description

The Food Desert Relief Act allocates \$40 million annually in Corporate Business and Insurance Premiums Tax credits over six years, beginning with fiscal year 2021. The FDRA authorizes NJEDA to either award these credits to eligible applicants through the Food Desert Relief Tax Credit Program or to sell all or a portion of the tax credits through a competitive auction process or publicly advertised solicitation for offers. Any unused allocation of tax credits carries forward to future years, meaning that a cumulative total of \$120 million of tax credits is available currently, and an additional \$40 million will

become available as of July 1, 2023, bringing the cumulative total available to \$160 million later this year.

Eligible bidders may purchase the credits for a minimum of 85 percent of face value for New Jersey Corporate Business Tax or Insurance Premiums Tax. As described above, the proceeds of the sale will be utilized to fund grant, loan, and/or technical assistance programs administered by the Authority to strengthen food security in New Jersey, pursuant to the parameters set out in the FDRA.

Staff is seeking Board approval to sell up to \$50 million of the \$120 million in currently available tax credits in calendar year 2023. Staff may also seek Board approval to sell additional credits in the future, after considering demand for the Food Desert Relief Tax Credit Program from supermarket and grocery store developers and operators as well as market conditions. A range of approaches is necessary to have an impact on the structural conditions that have led to the persistence of food deserts, and auctioning tax credits to fund grants, loans, and/or technical assistance, alongside launching the Food Desert Relief Tax Credit Program allows NJEDA to take a multipronged approach to this issue.

Eligibility Criteria

Tax Credit Purchaser Requirements

To be awarded a tax credit under the proposed sale, a potential purchaser must meet the following criteria:

- The bidder must be a New Jersey Corporate Business Tax or Insurance Premiums Tax filer;
- The amount of tax credits the bidder proposes to purchase shall not be less than \$500,000;
- The percentage amount of the face value of the tax credits the bidder proposes paying (purchase offer price) shall not be less than 85 percent of the face value of credits;
- The bidder must provide a refundable deposit for 10% of the tax credit purchase offer, not to exceed \$500,000, at the time of bid (which will be applied to the final amount paid); and
- The bidder must be in good standing with New Jersey sister agencies, including the Division of Taxation, Department of Labor and Workforce Development, Department of Environmental Protection.

The auction will be run as a competitive process. Prior to opening the bid window, the Authority will establish and publicly disclose the timeline for the auction, provide detail on the information required in the bid and how award amounts will be calculated, and will accept questions from potential bidders and publicly post answers on the NJEDA website.

After the bid window closes, NJEDA staff will review the bids for completeness and will rank the completed bids based on purchase offer price, from highest to lowest. If the amount of tax credits requested exceeds the total amount available for purchase, the Authority may seek best and final offers from all bidders. Authority staff will determine the clearing price, defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for

purchase. Bidders offering a purchase price below the clearing price will be declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price, as described in **Appendix A**. If more tax credits are available than the aggregate amount requested in bids, bidders, starting with those ranked highest, may elect to increase their purchase amount. Bidders that are declined may appeal within 5 business days after written notice of a decision. Detailed information on the estimated auction timeline and calculation of award amounts can be found in **Appendix A**.

Post-Approval Process

Upon selection as a tax credit purchaser, corporations will execute a tax credit purchase agreement. Failure by the purchaser to pay the amount agreed on time shall make the purchaser ineligible for any NJEDA tax credit auction participation in the next twelve months. With regard to Evergreen, the Evergreen tax credit rules provides for such ineligibility for any entity that “was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits.” In such event, the Authority may offer the tax credits for purchase to other purchasers based on ranking, without re-auction, at the same or higher price as in the other purchaser’s tax credit purchase offer.

After initial purchase, pursuant to the FDRA, the tax credit purchaser has the option to resell the tax credit for no less than 85 percent of the transferred credit amount. There are no additional resales.

NJEDA shall publish on its website information on each tax credit purchaser as well as information on any tax credits that are transferred, pledged, or otherwise sold.

More information about this post-approval process can be found in **Appendix A**.

Request for Delegation

Delegation to the Authority’s Chief Executive Officer is requested of the Board of the Authority for the following items:

- To establish the amount of tax credits to be auctioned in 2023, up to the amount approved by the Board, based on an assessment of economic and market conditions. This may include setting an amount lower than that approved by the Board. This may also include subsequently increasing the available amount after the auction opens, in response to demand, up to the amount approved by the Board.
- To establish a date for the 2023 tax credit auction. Please refer to **Appendix A** for a complete description of the auction process, including an estimated timeline of activities.
- To approve tax credit purchasers as long as the bidders have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed in this memo (see Appendix B). Delegated authority is recommended because the selection and approval of tax credit purchasers is based on non-discretionary factors and a ranking based solely on purchase

price. Any change to the tax credit auction award calculation method or other eligibility criteria will be brought to the Board.

- To decline tax credit purchasers that are deemed ineligible based on non-discretionary criteria or that submit final bids below the clearing price. As eligibility is based on non-discretionary criteria and the ranking of bidders is based solely on purchase price, staff does not anticipate bringing declinations to the Board.

Fees

There are no external fees associated with the tax credit auction. At the time of auction, a 10% deposit up to \$500,000 must be paid by bidders at the time of bid. This deposit will serve as a qualifier to ensure corporate bidders maintain sufficient capital to participate in the auction and to affirm the seriousness of their bid. If awarded, the deposit will be attributed to the final award payment. If a bid is declined (either for missing documentation, ineligibility, or an offer price below the clearing price), this amount will be refunded to the auction participant.

Recommendation

The Members are asked to approve:

- 1) The sale of up to \$50 million in available tax credits in calendar year 2023 in a manner consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
- 2) Delegated authority to the Chief Executive Officer to establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.
- 3) Delegated authority to the Chief Executive Officer to establish start and end dates for the tax credit auction.
- 4) Delegated authority to the Chief Executive Officer to approve tax credit purchases as long as the bids have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed herein.

Tim Sullivan
Chief Executive Officer

Prepared by:

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Attachments

Appendix A—Auction and Bid Review Process

Appendix A – Auction and Bid Review Process

Overview

As authorized by the Food Desert Relief Act, N.J.S.A. 34:1B-303, et seq., the NJEDA will raise capital for programs to increase food security in New Jersey by auctioning up to \$50 million of tax credits in calendar year 2023 to New Jersey Corporate Business Tax and Insurance Premium Tax taxpayers. Auction bids will be evaluated and scored according to the price (“Purchase Offer”).

The following provides an overview of the auction . The process includes an approach to marketing the auction, how to execute the auction bid period, bid review process, award amount calculation, and closing process.

Auction Process

The auction will be run as a competitive process. Bid submissions will be reviewed by EDA staff for eligibility and price. All eligibility criteria (listed in the memorandum) will be communicated to the market in advance of the auction. Thirty days in advance of the auction opening, the following will be made available on the NJEDA website:

- A sample bid form
- Detailed information on the auction process
- A sample template tax credit purchase agreement
- Information on how to submit questions and comments to NJEDA

Questions may be submitted until 14 days before the auction opens. Answers to submitted questions will be posted on the NJEDA website on a rolling basis, with all answers posted by 7 days before the auction opens. Any changes to the above-mentioned documents based on the questions and comments submitted will be publicly posted prior to the auction opening. No changes will be made after the auction opens.

Once the auction launches (Day 1 noted below), potential purchasers will have 30 days to submit their bid. All bids are due 30 days after the auction opens, along with a refundable deposit equal to 10% of the purchase price. Payment of the deposit must be initiated by the auction close, and evidence of such payment must be provided with the bid. Once the auction closes, NJEDA staff will review the bids for completeness and request any missing documents, if needed. Bidders will have ten business days to provide missing documentation, but not to pay or initiate payment, starting when they are notified by NJEDA staff. Once this completeness review is finished, staff will rank the bids by purchase offer price, from highest to lowest.

If the amount of tax credits requested exceeds the total amount available for purchase, the Authority may seek best and final offers from all bidders. If a best and final offer is requested, Staff will communicate the bid spread to the purchasers. At that time, bidders will be permitted to increase and resubmit their purchase price to remain competitive. Purchase prices may not be lowered, and bids may not be rescinded.

The final purchase price will determine the rank order of bids for the purpose of determining award amounts. This process is described in more detail later in this appendix.

A written notice will be sent to all approved bidders indicating approval, with purchase agreements that the purchaser must execute and return to NJEDA along with remaining amount due (the approved award less the deposit paid at bid submission). If a bidder does not wish to (or is unable to) follow through on their submitted bid, the credits can be offered by the Authority to other bidders, in order from highest bidder to lowest, without need of re-auction, for the same purchase price per tax credit dollar offered by these other bidders. As a remedy for the default of not closing on the commitment, the withdrawing bidder is not eligible to participate in any NJEDA tax credit auction for the following year, including both a potential future FDRA tax credit auction as well as future New Jersey Innovation Evergreen Fund tax credit auctions (per the Evergreen tax credit auction rules) within one year.

Estimated Summary Timeline

Auction Timeline	
<ul style="list-style-type: none"> • Example bid form and agreement template posted to website • Q&A period opens, with questions answered on a rolling basis and posted to website 	Day -30
<ul style="list-style-type: none"> • Q&A period closes 	Day -14
<ul style="list-style-type: none"> • Answers posted 	Day -7
<ul style="list-style-type: none"> • Online auction launches 	Day 1
<ul style="list-style-type: none"> • All bids due, including initiation of refundable 10% deposit 	Day 30
<ul style="list-style-type: none"> • NJEDA staff review bids for completeness and notify bidders of any missing documents 	Day 45
<ul style="list-style-type: none"> • NJEDA staff ranks bids • Best and final offer notification sent to bidders if auction is over-subscribed 	Day 55
<ul style="list-style-type: none"> • 	
<ul style="list-style-type: none"> • Final bids due 	Day 70
<ul style="list-style-type: none"> • Bid ranking and award amount calculation completed 	Day 75

<ul style="list-style-type: none"> Bidders notified of approval and provided with purchase agreement or notified of declinations (with a right to appeal within 5 business days after written notice of a decision) 	Day 80
<ul style="list-style-type: none"> Bid contracts executed and Purchaser wires remaining amount due (final purchase offer less the deposit made at auction close). 	Day 110
<ul style="list-style-type: none"> NJEDA staff notifies Taxation of receipt of funds and requests issuance of tax credit 	Day 115

Purchase Amount Calculation

Upon submission of an auction bid, NJEDA staff will review the bid materials for completeness. Required information will include, without limitation: company identification information, primary contact information, purchase offer (including requested amount of tax credits, bid price, total value), New Jersey tax clearance certificate, and legal questionnaire. All bidders must be in good standing with the New Jersey Department of Labor and Workforce Development and with the New Jersey Department of Environmental Protection.

Staff will ensure bidders comply with auction requirements. Eligible purchase offers must consist of:

- Tax credit request of at least \$500,000 (face value)
- Purchase offer price to be paid of at least 85 percent of face value
- Refundable deposit for 10% of the tax credit purchase offer, not to exceed \$500,000. Deposit must be initiated by the bidder before the deadline.

Following submission, EDA staff will inform the potential purchaser’s primary contact if there is a discrepancy in the bid information or if any required information is missing. Only complete bids will be eligible for consideration. Missing documents must be submitted during the 10 business-day period following notification by staff. If required documents are not received during this period, bids will be considered incomplete.

Purchase Offer

The purchase offer is comprised of two components: the amount offered per dollar of tax credit (with a minimum of 85 percent of face value), and the volume of request (with a minimum of \$500,000). This

price floor is mandated in statute and helps to ensure strong purchase offers. The FDRA sale price floor is higher than the minimum price floor that applies for purchases in the New Jersey Innovation Evergreen Tax Credit Sale and is closely aligned with the minimum transfer prices utilized in other ERA tax credit incentive programs.

The bidder must submit a refundable deposit of 10% of the purchase offer at the time of bid. The amount will be applied to the final amount paid. The deposit becomes non-refundable on the effective date of the tax credit purchaser contract. If the approved bidder does not execute the contract the 10% deposit will be returned. An approved bidder that fails to execute the contract, or a bidder that executes the contract but fails to pay the remainder of the purchase offer within 30 days of approval, shall not be eligible to participate in an NJEDA tax credit auction for one year. An example of a purchase offer is below:

Purchase Offer Elements	Example
Amount of Tax Credits Requested (face value)	\$10,000,000
Purchase Offer Price (per dollar of tax credits)	\$0.85
Total Purchase Offer	\$8,500,000
Refundable Deposit Due at Bid Submission (10% of total purchase offer, but no more than \$500,000)	\$500,000

Oversubscription

In the event the final requested amount of tax credits exceeds the amount of credits available in the auction, best and final offers will be requested, and not all bidders will receive the full amount of tax credits that they requested. After best and final offers are received all qualified bids will be ranked in sequential order from the highest purchase offer price (that is, the amount per dollar of tax credit) to the lowest purchase offer price. Then the clearing price will be determined. The clearing price is defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase. Bidders offering a purchase offer price below the clearing price will be declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase offer price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price. There is no minimum tax credit award, and such proration could result in tax credit awards below the minimum tax credit request of \$500,000.

This example shows the methodology for how this process will work in a hypothetical auction with \$10 million of tax credits available and eight bidders, requesting an aggregate total of \$20 million. The bidders are ranked from highest to lowest based on purchase offer price.

Bidder	Purchase Offer Price	Face Value	Total Purchase Offer
A	\$0.95	\$3,000,000	\$2,850,000
B	\$0.95	\$1,000,000	\$950,000
C	\$0.93	\$2,000,000	\$1,860,000

D	\$0.93	\$1,000,000	\$930,000
E	\$0.90	\$2,800,000	\$2,520,000
F	\$0.90	\$2,200,000	\$1,980,000
G	\$0.90	\$1,000,000	\$900,000
H	\$0.85	\$7,000,000	\$5,950,000
TOTAL		\$20,000,000	\$17,940,000

The clearing price is \$0.90, because \$13 million is requested at or above that price. Bidder H, who offered a price below the clearing price, is declined and receives no tax credits. Bidders A through D receive the full amount of tax credits that they requested, at the purchase prices they offered. Bidders E through G, who offered the clearing price, receive a tax credit award amount that is prorated based on the amount they requested and the amount of tax credits remaining after accounting for the bids above the clearing price. In this example, \$6 million was requested at the clearing price of \$0.90. Only \$3 million is available after the bids above the clearing price are accounted for, which is equal to half of what was requested. Therefore, each of the bidders who bid at the clearing price receives an award that is equal to 50% of the tax credit amount that they requested.

Clearing Price	\$0.90
Amount Requested Above Clearing Price	\$7,000,000
Amount Requested at Clearing Price	\$6,000,000
Amount Requested Below Clearing Price	\$7,000,000
Total Amount Available	\$10,000,000
Amount Awarded Above Clearing Price	\$7,000,000
Amount Available to Award at Clearing Price	\$3,000,000

The bids and awards in this example auction are shown below.

Bidder	Purchase Offer Price	Face Value	Tax Credits Awarded	Total Amount Due
A	\$0.95	\$3,000,000	\$3,000,000	\$2,850,000
B	\$0.95	\$1,000,000	\$1,000,000	\$950,000
C	\$0.93	\$2,000,000	\$2,000,000	\$1,860,000
D	\$0.93	\$1,000,000	\$1,000,000	\$930,000
E	\$0.90	\$2,800,000	\$1,400,000	\$1,260,000
F	\$0.90	\$2,200,000	\$1,100,000	\$990,000
G	\$0.90	\$1,000,000	\$500,000	\$450,000
H	\$0.85	\$7,000,000	\$0	\$0
TOTAL		\$20,000,000	\$10,000,000	\$9,290,000

Undersubscription

In case of undersubscription to the auction, remaining tax credits will be made available to bidders who indicated interest in additional allocation at time of bid. Priority is assigned by purchase offer price with

the credits offered at the lowest price bid. This mechanism offers an incentive to the highest bidder(s) and secures a strong bid from all parties.

If some of the tax credits allocated for the 2023 auction are not awarded, the remainder may be issued through the Food Desert Relief Tax Credit Program or carried over to future FDRA tax credit auctions.